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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/680,648	10/07/2003	Philip Orlando Underhill	PU8469US01	5103

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EXAMINER

LEV, BRUCE ALLEN

ART UNIT PAPER NUMBER

3634

DATE MAILED: 12/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/680,648

Applicant(s)

UNDERHILL, PHILIP ORLANDO

Examiner

Bruce A. Lev

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

BRUCE A. LEV
PRIMARY EXAMINER

DETAILED ACTION

Claim Rejections - 35 USC 112

Claims 7 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

There is an inconsistency between the language in the preamble and certain portions in the body of the claims, thereby making the scope of the claims unclear. For example, the preamble clearly indicates that the subcombination of a ladder "***stand-off***" is being claimed with the functional recitation of the "stand-off" being used "for use with a ladder". However, the body of the claim positively recites the "***ladder***", e.g., "***distance less than said ladder width***" (claim 7), and "***equal to said ladder width***" (claim 9), which indicates the claims as being drawn to a combination of the "stand-off" and the "ladder". Therefore, the applicant is required to clarify what the claims are intended to be drawn to, i.e., either the "stand-off" alone or in combination with the "ladder", and to present the claims with the language which is consistent with the invention. The applicant should note that "adapted to be" language may be appropriate if claiming the "stand-off" alone (i.e., "adapted to be secured to").

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3634

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-21 are rejected under 35 U.S.C. **103(a)** as being unpatentable over **Perry 3,715,012 in view of Gibson 3,288,249.**

Perry sets forth a ladder stand-off comprising a beam 2; first and second arms 30 extending outwards from the beam and angularly divergent from each other (less than 90 degrees), wherein the attachment points to the beam are a distance less than that of the beam; means for detachably securing the beam to a ladder (inclusive of members 22); pivoting contact elements 10 at the end of each arm (viewed as L-shaped or U-shaped with a central web via the perpendicular attachment portion/flanges...best illustrated in Figures 1 and 2). **What Perry does not set forth** is a contact element pivotally connected to a second end of each arm, and wherein the arms are formed of square tubing. However, **Gibson teaches** the use of a contact element pivotally connected to a second end of each arm, and wherein the arms are formed of square tubing. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the stand-off of Perry by incorporating a contact element pivotally connected to a second end of each arm, and wherein the arms are formed of square tubing, as taught by Gibson, in order to have the stand-off adapt to different shaped building elements, and also to increase the strength and reduce the weight of the stand-off.

Conclusion

Remarks filed December 7, 2004 have been considered but have not been persuasive.

As concerns remarks pertaining to the language in claims 7 and 9, the examiner reiterates the position that a claimed element (the stand-off) should not be compared to an element that is NOT claimed as part of the invention (the ladder).

As concerns remarks pertaining to the ends of the arms of Perry not connected to the beam, the examiner takes the position that depending on the definition of the "ends of the arms", the "portions" that are attached to the beam can be viewed as "ends" which ARE attached to the beam.

Applicant's amendment and remarks, including "a contact element pivotally connected to a second end of each arm, and wherein the arms are formed of square tubing" (i.e., in claims 1 and 20 and 21), necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bruce A. Lev whose telephone number is (703) 308-7470.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-2168.

December 21, 2004

A handwritten signature in black ink, appearing to read 'Bruce A. Lev', with a large, stylized initial 'B'.

Bruce A. Lev

Primary Examiner

Group 3600